

UNITED STATES OF AMERICA  
Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
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Review of Sunset Rules

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Docket No. RM2001-3

COMMENTS OF THE OFFICE OF THE CONSUMER ADVOCATE  
UPON WHETHER THE COMMISSION SHOULD REISSUE ANY OF ITS  
EXPIRED SUNSET RULES  
(August 21, 2001)

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The Office of the Consumer Advocate ("OCA") hereby comments upon the Commission's Notice and Order Concerning the Rules of Practice issued on July 18, 2001, in the above-styled docket. The Commission requests comment upon five Commission rules to determine the advisability of reissuing some or all of the rules that have expired by operation of their five-year sunset provisions. Comments are due August 21, 2001.

INTRODUCTION

The five expired rules relate to (1) a market response rate for Express Mail (Rules 57 through 57c adopted in 1989) and four rules adopted in 1996 involving limited classification changes including (2) market tests of proposed mail classification changes (Rules 161 through 166), (3) provisional service changes of limited duration (Rules 171 through 176), (4) expedited review of minor mail classification changes (Rules 69 through 69c), and (5) extended use of a multi-year test period (up to five years) for determining breakeven of a new postal service (Rule 182).

In order to determine whether to reissue expired rules, the OCA suggests that certain questions are relevant. Were the rules invoked while they were in effect? Regardless of whether the expired rules were used while they were in effect, are the expired rules likely to be used in the future? Are there changed circumstances, or are the rules obsolete, duplicative, or impractical for use by their terms or conditions? Were the rules used successfully and without procedural difficulties, such that the rules are technically and procedurally workable and could be reissued as originally enacted? Do any of the rules need revision? Should any rules be combined, either with each other or with other currently effective rules? Do the rules need to be conformed to the Commission's proposed electronic filing rules in the *Filing Online* rulemaking?

Upon consideration of these questions, the OCA recommends the Commission not reissue the market response rate rule for Express Mail but that the Commission reissue the four rules involving limited classification changes.

I. Market Response Rate for Express Mail (Rules 57 through 57c)

These rules, adopted in 1989 at the request of the Postal Service, were intended to expedite changes in Express Mail rates in order to meet market conditions so as to minimize the loss of Express Mail's contribution to institutional costs. The rules required that the market response rates should be no lower than the attributable cost of Express Mail (Rule 57b). The Postal Service never invoked the rules but, nevertheless, in 1994 requested re-enactment of the rules. The rules were reissued but again were not utilized. They expired by their terms on March 6, 2000. At this time, the Postal Service has not requested an extension of the rules.

The OCA recommends that the Commission not reissue the market response rate for Express Mail rate rules. Although the rules were carefully prepared after full notice and comment and established detailed procedural and data requirements to meet an apparent need, history demonstrates that they are not necessary. The Commission is always open to requests for expedited or simplified proceedings on a case-by-case basis. If the need arises to file a request that might fall within the parameters of the expired rule, the Postal Service may seek expedited review through motion for waiver or other request.<sup>1</sup>

## II. Market Tests of Proposed Mail Classification Changes (Rules 161 through 166)

The market test rules for proposed mail classification changes (Rules 161 through 166) permitted market testing of proposed service changes to develop information necessary to support a permanent change in service. They expired pursuant to Rule 161(b) on May 15, 2001. The rules provide for information as to the nature, scope, significance and impact of the proposed market test (Rule 162) and for expeditious notice and procedures (Rule 163) as well as reporting of test data to the Commission (Rule 165). The Rule is particularly useful as it provides for a Commission consideration on the market tests "within 90 days" (Rule 164).

These rules were successfully invoked one time during their five-year term by the filing in Docket No. MC98-1, *Mailing Online Service*, and the proposed market test was approved October 7, 1998. Market tests are likely to be used in the future inasmuch as

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<sup>1</sup> For instance, the Commission's Rule 21(a) provides that, "An application for an order or ruling not otherwise specifically provided for in this part shall be by motion." Rule 22 provides for a request by motion to waive in whole or in part any requirement of the rules if not otherwise prohibited by law and if it will not unduly prejudice another party's interests.

the Postal Service has ongoing projects to either improve, expand, or initiate postal services to increase volume and revenue. Although the Mailing Online market test was eventually withdrawn due to technical difficulties, the Commission's rules performed as anticipated and resulted in a timely Commission decision. The Commission opinion was issued within 90 days after the initial application (July 15 to October 7). Inasmuch as the market test rules may well be used in the future and they have proved useful and workable, they should be reissued.

### III. Provisional Service Changes of Limited Duration (Rules 171 through 176)

The rules for provisional service changes of limited duration are similar to the expired market test rules in terms of the procedures, data, and 90 day time frame for Commission decision. However, the time period of the authorization may be no more than two years with a possible one year extension. This is longer than the market test rules that limit recommendations to no more than one year (Rule 161(a)).

These rules are applicable when the Postal Service believes it does not need a market test prior to initiating the service and chooses to implement the new service on a broader scale than for a market test. The rules were invoked once by the Postal Service in Docket No. MC97-5, *Provisional Packaging Services*, and on March 31, 1998 the Commission recommended approval with certain conditions of the proposed packaging service. However, the Board of Governors has not acted upon the recommendation.

In applying the above-mentioned tests for reissuance, there is no reason to suppose the Postal Service might not propose provisional service changes in the future as it attempts to develop new and innovative ways of doing business. The existence of

such rules may serve to encourage, or at least not inhibit, the Postal Service from proposing a desirable new provisional service. If the Postal Service is likely to be opposed in seeking to obtain special waivers of rules relating to classification changes, including waiver of numerous data requirements, then procedural roadblocks could preclude it from obtaining the benefits of the expired provisional rules. The benefits of the rules are that they encourage expedition in the resolution of cases rather than continue with the type of roadblocks often found in traditional "one size fits all" rules.

The case that utilized these rules for provisional service changes involved a hearing and briefing.<sup>2</sup> The rules proved workable and practical and led to a timely Commission decision on the Postal Service request. For these reasons, the Commission should reissue these rules on provisional service changes.

#### IV. Expedited Review of Minor Mail Classification Changes (Rules 69 Through 69c)

These rules for the expedited review of minor mail classification changes are applicable to classification changes where there is no change in an existing fee, the change does not impose any restrictions on the entry of mail, and does not significantly change the institutional cost contribution of the service affected (Rule 69). The rules require estimates of the impact of the change and require that waiver be obtained for the failure to file the extensive data requirements in Rule 64 and an explanation of why that information is unavailable. In large part, the rules mirror procedurally the other

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<sup>2</sup> *Provisional Packaging Service*, Docket No. MC97-5, March 31, 1998.

expired rules, but provide for a decision in 90 days if no hearing is held and 120 days if a hearing is held. The rules expired on May 15, 2001.

Again, these rules were invoked once by the Postal Service while they were effective. They were appropriate and applicable to the proposal to expand the availability of the Bulk Parcel Return Service in Docket No. MC99-4. The proceeding was settled, but the rules for the expedited review of minor mail classification changes in effect at the time proved appropriate and useful. There is no reason to expect that in certain circumstances these rules would not again be invoked, perhaps even in a case again involving the Bulk Parcel Return Service as the customers or the service requirements for that service change. Also, the procedural rules were workable and appropriate to the purpose and, with the caveat below regarding the proposed new electronic filing requirements, do not require modification prior to reissuance.<sup>3</sup>

V. Extended Use of Multi-Year Test Period (up to Five Years) for Determining Breakeven of a New Postal Service (Rule 182)

This rule does not apply to a particular change in service, but relates to the use of an assumed test period that is longer than one year in order to justify a new postal service. This rule expired on May 15, 2001 and has never been invoked by the Postal Service. Although not yet applied, it does not follow that the Postal Service may not

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<sup>3</sup> This is not to say that some minor procedural adjustments might not be found in any of the rules under consideration if one reviewed at length and in detail the proceedings under each of the rules. The OCA participated in each of the proceedings and did not find cause for objections to the procedures provided for in the rules. The OCA has not undertaken the task of reviewing the past cases in detail for procedural difficulties arising from the rules but believes it is unlikely it would uncover any significant procedural problems created by the rules.

develop an innovative or experimental new service that requires a longer test period to justify the up-front expenses.

This multi-year test period rule is not complicated. If it is not reissued, the Postal Service could easily seek the same authorization which these rules provide by obtaining a waiver of the appropriate rules. The trade-off is the loss of the signal to the Postal Service and the postal community that the Commission is willing to entertain new services that require a longer test period to justify them financially. Absent the rule, future Commissions may not be as ready and willing to provide for waiver of other Commission rules to carry out the intent of this multi-year rule.

#### VI. Electronic Filing Requirements

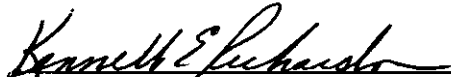
The Commission is in the process of revising its rules regarding electronic filing requirements.<sup>4</sup> All of the rules that are the subject of this proceeding provide for special filing, notice and service procedures in order to expedite the particular requests involved. If the Commission decides to reissue the rules, special care should be taken to take the opportunity to conform the administrative matters to the electronic filing rules.

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<sup>4</sup> *Filing Online*, Docket No. RM2001-2, "Notice and Order Concerning Electronic Filing Procedures," June 13, 2001.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE

  
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

  
Kenneth E. Richardson

Washington, D.C. 20268-0001  
August 21, 2001